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**ARIZONA CORPORATION COMMISSION**

July 20, 2005

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D. C. 20554

Re: In the Matter of Developing a Unified Inter-carrier Compensation Regime  
Docket No. CC 01-92

Dear Ms. Dortch:

Enclosed is a copy of the Reply Comments of the Arizona Corporation related to the above-mentioned matter.

Please contact me if you have any questions concerning this matter.

Very truly yours,

A handwritten signature in black ink that reads "Christopher C. Kempley". The signature is written in a cursive style.

Christopher C. Kempley  
Chief Counsel

CCK:klc

Enclosure

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Developing a Unified Inter-carrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

**REPLY COMMENTS OF THE  
ARIZONA CORPORATION COMMISSION**

**I. INTRODUCTION**

On March 3, 2005, the Federal Communications Commission ("FCC" or "Commission") issued a Further Notice of Proposed Rulemaking ("FNPRM") seeking additional comment from interested parties on the current system of inter-carrier compensation and how it might be reformed. The Arizona Corporation Commission ("Arizona" or "Arizona Commission") appreciates the opportunity to submit reply comments in this important docket. A diverse group of parties filed comments in this proceeding; giving the Commission a good array of opinions on the issues raised and the plans that have been submitted to-date. Arizona has reviewed many of these comments, and while it does not agree with all of the positions taken, finds that the comments of many provide well thought out positions on the issues raised. The Arizona Commission's comments will primarily respond to the comments of other parties on the legal parameters of any inter-carrier compensation plan, and whether the plans offered by various parties meet these parameters.

## **II. DISCUSSION**

### **A. Arizona Supports the Comments of Those Who Favor a More Measured Approach to Intercarrier Compensation Reform Than is Suggested in Some Plans and in The FNPRM**

Arizona supports a more measured approach to Intercarrier Compensation reform than that contained in the comments of some parties, or the approaches taken in some of the proposed Plans now pending before the Commission, or the approach suggested in the FNPRM itself. Almost all commenters agree that the current system of Intercarrier Compensation is not working; and is likely to become even more dysfunctional once VoIP protocol becomes more prevalent. Many parties also agree on the goals of any new Plan: 1) it should be competitively and technologically neutral in its application; 2) it should ensure universal service; 3) it should be uniform and reflect the realities of the network i.e., it should be “indifferent to the endpoint of the call, the nature of the interconnecting carriers (unless their actual use of the network varies) and the types of technologies used”<sup>1</sup>; 4) it should provide for balanced roles for both the States and the FCC; 5) it should comply with statutory requirements and limitations; 6) it should provide regulatory certainty; 7) it should limit non-cost-based regulatory distinctions, and 8) it should minimize arbitrage opportunities. However, despite widespread agreement on the problems and the objectives of a new Plan, there is little agreement on how to accomplish the needed reforms.

With respect to the Plans now pending before the Commission, almost all commenters agree that no one Plan in its entirety is acceptable.<sup>2</sup> The Plan that appears to come closest to achieving consensus is the National Association of Regulatory Utility Commissioners (“NARUC”) Plan; a plan that was developed through an open and

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<sup>1</sup> See Comments of the New York State Department of Public Service, p. 2.

<sup>2</sup> The proposed Plans are sponsored by: 1) the Intercarrier Compensation Forum (“ICF”), 2) the Expanded Portland Group (“EPG”), 3) the Alliance for Rational Intercarrier Compensation (“ARIC”), 4) the Cost Based Intercarrier Compensation Coalition (“CBICC”), 5) Home Telephone Company and PBT Telecom (“Home/PBT”), 6) Western Wireless, 7) NASUCA, 8) NARUC, 9) Frontier Telephone Company, 10) BellSouth, 11) Qwest and 12) PacWest. Many of the Plans involve a comprehensive proposal for reforming current network interconnection, intercarrier compensation, and universal service rules.

collaborative process and one which reflects the devotion of considerable effort and thought to the issues raised in this proceeding. It is also the only Plan which has the input of various state regulators together with various industry participants. This plan and the Plan submitted by the Rural Alliance are also the only two plans that attempt to balance the role of the FCC with the State commissions in this important area.

However, the FCC need not and should not accept any Plan in its entirety. It should, in the words of one carrier, take a “best in class” approach, adopting “those proposals of value from the record, while avoiding more draconian suggestions that have not yet been tested.”<sup>3</sup>

We found three other points in the parties’ initial comments to be particularly noteworthy and instructive to the FCC and State commissions on the issues raised in this proceeding. First, carriers have a limited number of revenue streams to absorb the impact of any revenue reduction resulting from reform efforts – inter-carrier compensation, universal service support, and end-user rates.<sup>4</sup> Over-reliance on any one revenue stream, i.e., end-user rates, including the subscriber line charge, or universal service support may solve the old set of problems, but create a new set in its place. Second, while the concept of a unified, national scheme for inter-carrier interconnection and compensation certainly is appealing, it also carries a hefty price tag and substantial risk, and appears to go far beyond what is necessary to resolve the issues raised.<sup>5</sup> Third, if the estimates given by some carriers in their initial comments are correct, the FCC and states should proceed in a measured manner to achieve any necessary reform. For instance, one carrier notes that, “[t]he record indicates that the elimination of inter-carrier compensation could shift as much as \$9 billion per year in charges that, ultimately, would be paid by end-users.”<sup>6</sup>

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<sup>3</sup> See Comments of CenturyTel, p. 9.

<sup>4</sup> See Comments of CenturyTel, p. i; See also Comments of TDS Telecommunications Corp. (“TDS”).

<sup>5</sup> Comments of CenturyTel, p. 1.

<sup>6</sup> *Id* at p. 9 (citing Letter from Richard R. Cameron to Marlene H. Dortch, Secretary, CC Docket No. 01-02 (Dec. 14, 2004)(“adding approximately \$6.34 billion in estimated SLC increase and approximately \$2.67 in TNRM/ICRM Support).

Further, wholesale elimination of all of the current intercarrier compensation mechanisms either through replacement with bill-and-keep or a national plan, is not supported by the record in this case. Most carriers do not favor a mandated bill-and-keep approach.<sup>7</sup> Not even all of the larger carriers favor a mandated bill-and-keep approach.<sup>8</sup> Moreover, aspects of many of the national plans proposed by parties, upon closer inspection, have significant flaws such that their adoption, is likely to bring on a whole new set of problems.<sup>9</sup>

The Commission does not have to wholesale abandon the current system in order to resolve the inequities with the current system.<sup>10</sup> For instance, the structural differences between reciprocal compensation and access charges made sense when they were adopted by the Commission and continue to make sense today. The record does not support collapsing these two pricing mechanisms into one national pricing structure.<sup>11</sup> The different intercarrier compensation regimes for local and interexchange calls are justified by the different retail and end-user relationships involved in call origination in the two cases.<sup>12</sup> They also reflect real variations in the technical and economic

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<sup>7</sup> See Comments of the National Telecommunications Cooperative Association (“NTCA”) (“A bill and keep regime would have a disparate impact on rural carriers.”). See Comments of TDS (“The reality of the situation is that imposing a bill-and-keep regime on rural ILECs and suburban CLECs will significantly destabilize carrier revenues (at minimum imposing massive burdens on the USF), undermine the provision of quality telecommunications services in rural and suburban markets, and virtually eliminate incentives (and resources) to invest in telecommunications infrastructure in these markets.”).

<sup>8</sup> See Comments of Verizon.

<sup>9</sup> See Comments of Century Tel at p. 12 (“The ICF proposes that end-users should bear roughly 66 percent of that shift, or about \$6 billion, in direct rate increases.”). Id. at p. 27 (“Proposals to eliminate inter-carrier compensation altogether, or to go to uniform nationwide rates that fail to reflect cost characteristics of different study areas, put consumer welfare at risk”); Comments of TDS, p. 30 (“Upon further inspection, however, the ICF Plan interconnection proposal clearly discriminates against RLECs and CLECs in favor of the BOCs”), Id. at 30 (“With respect to CLECs, the ICF Plan is again patently discriminatory because of its distinction between ‘hierarchical’ and ‘non-hierarchical’ carriers.”).

<sup>10</sup> See also Comments of Cincinnati Bell Inc. at p. 4. (“Cincinnati Bell is not convinced that a total elimination or overhaul of the current system is necessary, or even practical”).

<sup>11</sup> Comments of TDS, p. 20 (“The conflation of access and reciprocal compensation regimes called for in these proposals would significantly destabilize the revenue streams of rural and suburban ILECs and CLECs and create uneconomic bypass opportunities.”)

<sup>12</sup> See Comments of TDS, p. 19.

circumstances surrounding local and interexchange calls and as such are consistent with the goals of intercarrier compensation reform and should be maintained.<sup>13</sup>

Rather than focusing upon the most extreme solutions to this problem, i.e., a national plan or bill-and-keep, which may result in a large dislocation of revenue now received by carriers and create multiple legal challenges and uncertainty, the Commission should look for approaches that maximize carriers' and states' flexibility to identify intercarrier compensation problems and tailor solutions to address them.<sup>14</sup> For instance, instead of mandating a national solution, the Commission might in the first instance encourage voluntary agreements between carriers pursuant to Section 252 of the Act.<sup>15</sup> Some larger carriers in highly competitive markets may voluntarily opt for bill-and-keep under a negotiated arrangement.<sup>16</sup> Absent agreement by the carriers, the states should resolve any rate issues under Section 252 subject to FCC guidelines. While equal treatment among carriers is important to the extent their uses of the network are the same to address the inequities of the current system, Arizona does not believe that a nationwide uniform rate level is necessary or even in the public interest.<sup>17</sup>

It is also important that the Commission be able to assess, in an objective and concrete manner, the impact of any proposed changes to the current system of intercarrier compensation, before it proceeds down any particular path, but most importantly if it is contemplating a wholesale abandonment of the current system.<sup>18</sup>

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<sup>13</sup> *Id.* at p. 18.

<sup>14</sup> See Comments of the New York State Department of Public Service ("NYSDPS") at p. 2.

<sup>15</sup> *Accord*, NYDPS at p. 2; United States Telephone Association at p. 15 ("The Commission should rely in the first instance on competition and commercial agreements where possible to determine market outcomes."); Verizon at p. 8.

<sup>16</sup> ("As has occurred with the Internet, the Commission should allow the markets to dictate whether and when carriers move to bill-and-keep.") Comments of BellSouth at p. 12.

<sup>17</sup> See also Comments of the NYDPS at p. 5 ("Even where regulatory assistance is required, such as in arbitrating those agreements, there need be no expectation of nationally uniform outcomes. As experience with unbundled network element (UNE) rates reveals, even where a nationally uniform cost standard is imposed, there should be no expectation that nationally uniform rates will result.").

<sup>18</sup> See also Comments of the Nebraska Public Service Commission at p. 5. ("Before any new intercarrier compensation plan is implemented, the effect of the plan on local exchange rates, including both interstate and intrastate SLCs, should be computed.")

**B. Critical Issues Surrounding IP Networks Remain Unresolved; However The Resolution of These Issues Is Critical For Purposes of this Proceeding**

In the words of one commenter, “there is no clear proposal in the record for exchange of IP-to-IP traffic.<sup>19</sup> As networks incorporate more IP-based technology and convert to IP format, any Plan must account for this traffic.

One of the main complaints about the current system is the varying and inequitable application of the system to different classes of providers, which in many instances is not supported by any different uses of the network. One provider notes:

“Local exchange carriers generally compensate each other for terminating traffic through reciprocal compensation payments. Interexchange carriers generally compensate local exchange carriers for use of their networks through switched access and special access charges for both terminating and originating traffic. Enhanced service Providers/Information Service Providers (ESPs/ISPs) have generally been exempted from paying access charges and obtain access to local networks by buying local business lines. It is unclear whether or how VoIP providers compensate anyone other than their individually selected partner carriers, whom they use as an interface to other carriers.”<sup>20</sup>

However, it appears that the Commission may be contemplating another variance in the application of intercarrier compensation rules with VoIP. Classification of VoIP (and DSL or cable modem service for that matter) as an information service will introduce even more opportunities for regulatory arbitrage which is only going to exacerbate the inequities of the current system.<sup>21</sup> Now, new entrants provide telephone service through VoIP technology without being subject to intercarrier compensation rules, since the FCC has not yet ruled on this issue.<sup>22</sup> To some extent, Arizona agrees with at least one commenter which observes, “[s]imply applying the same compensation rules to ESPs/ISPs and VoIP providers as have traditionally

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<sup>19</sup> Comments of CenturyTel at p. 44; See also Comments of Rural Iowa Independent Telephone Association (“RIITA agrees that affordable access to IP backbone service is necessary to ensure universal connectivity for rural customers. Indeed, RIITA sees this as one of the primary flaws with most of the plans proposed.”).

<sup>20</sup> Comments of Cincinnati Bell Inc., p. 2.

<sup>21</sup> See also Comments of Cincinnati Bell, p. 4.

<sup>22</sup> Id. (“Inter-carrier compensation issues cannot be truly resolved until the Commission also resolves the regulatory issues surrounding VoIP.”).

applied to local and interexchange carriers may be a simpler solution than creating a whole new compensation system.”<sup>23</sup>

Arizona believes that the Commission is going to have to address some of these critical classification issues before it can really begin to effectively address either intercarrier compensation or universal service reform. We believe that this point is captured best in the following excerpt from the comments of one carrier:

Past Commission actions have conferred advantages on new technologies in order to encourage their deployment (e.g., the ESP exemption to encourage development of the Internet, and exemption of VoIP providers from state telephone regulations). These exceptions have distorted the market and are a major cause of the perceived problems with the existing intercarrier compensation system. The regulatory system should not be used to select winners and losers or to promote one type of technology over another. In order for the Commission’s first stated goal of promoting economic efficiency to be achieved, the systems must be competitively and technologically neutral. Regulations should not be used to stimulate investment in one type of technology over another.”<sup>24</sup>

The Public Utilities Commission of Ohio noted that: “[w]hether IP based services are ultimately upheld as being interstate in nature and subject to exclusive regulation by the FCC will be determined outside the context of this docket.” However, carrier compensation for VoIP traffic is one of the significant questions posed concerning the provision of interconnected VoIP (i.e., VoIP traffic that traverses the Public Switched Telephone Network (PSTN)). *Id.* at p. 5. While interconnected VoIP traffic constitutes a very small percentage of the traffic that traverses the PSTN today, (and thus does not provide a basis for the Commission to preempt state authority over intrastate access rates or reciprocal compensation rates under the “mixed use” theory), it is likely to grow and its classification as interstate or intrastate should, in Arizona’s opinion, be no different than the traffic associated with traditional telephone service today. This does not mean, however, that Arizona supports application of all of the

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<sup>23</sup> *Id.*

<sup>24</sup> Comments of Cincinnati Bell at p. 5.

legacy based regulations in effect today to VoIP providers. While Arizona favors a light-handed regulatory approach for this traffic overall; it should not continue to be given special treatment in any intercarrier compensation reform plan since the FCC would then be once again favoring one technology over another, which is part of the problem with the current system.

**C. Many Commenters Recognize that the State/Federal Role In Any Intercarrier Compensation Plan Must Remain Balanced and Give Proper Recognition to the Responsibilities of Each Level of Government Under State and Federal Law**

The Commission should not entertain Plans, such as the ICF, that have as one of their primary components, preemption of state authority over intrastate access charges. We also note that some commenters urge preemption of the state's involvement in this area so as not to be burdened by a "patchwork" of 50 different rates and regulations. Arizona believes that these "patchwork" arguments are overrated and overused. Arizona recognizes the need to treat all carriers alike to the extent they utilize the same network functions and to eliminate opportunities for arbitrage to the extent possible, however, preemption of the state's legitimate authority over intrastate rates and services, is not an appropriate vehicle for the FCC to accomplish its goals.<sup>25</sup>

In its FNPRM at para. 63, the FCC specifically seeks comment on the legality of the various plans noting that they must "comply with the statutory provisions governing intercarrier compensation, such as sections 251(b)(5) and 252(d)(2) of the Act". The Commission also notes that "[a]ny proposal that contemplates reform of intrastate mechanisms...must include an explanation of the Commission's legal authority to implement the proposal."<sup>26</sup>

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<sup>25</sup> *Accord* NARUC Comments at p. 4 ("Whatever choice the FCC ultimately makes, it should avoid an approach that clashes with the clear reservation of State authority with respect to intrastate access charges.")

<sup>26</sup> NARUC Comments at p. 4.

BellSouth, among others, argues that a fundamental source of the Commission's authority to adopt the unified compensation plan emanates from Section 201 of the Act.<sup>27</sup>

Section 201 provides as follows:

"It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefore; and , in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." (Emphasis added).

More specifically, BellSouth argues that the second clause of Section 201 gives the FCC the authority it needs to establish intrastate access charges and reciprocal compensation rates.<sup>28</sup> To the contrary, all Section 201 does is to give the FCC jurisdiction over interstate traffic, and the division of charges related thereto.<sup>29</sup>

Moreover, to the extent that Section 201(b) authority applies not just to jurisdictionally interstate matters since passage of the 1996 Act, as argued by SBC and the ICF relying upon *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 377-86 (1999), the FCC's preemption authority would extend only to matters to which the 1996 Act applies. Since the state's jurisdiction over intrastate access charges remained intact under the 1996 Act, the Commission cannot rely upon Section 201 to assume jurisdiction over intrastate access rates in the future.<sup>30</sup>

BellSouth next relies upon Section 251(a) of the Telecommunications Act of 1996 ("1996 Act") which imposes a duty upon every telecommunications carrier "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."<sup>31</sup> However, Section 251(a) governs interconnection only and does not give the Commission authority to set intrastate access rates.

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<sup>27</sup> BellSouth Comments at p. 40.

<sup>28</sup> *Id.* at p. 40.

<sup>29</sup> *Accord*, Cincinnati Bell Comments at p. 15.

<sup>30</sup> *Accord*, NARUC Comments at p. 6; NYDPS Comments at p. 7; Maine and Vermont Comments at p. 6;

<sup>31</sup> BellSouth Comments at p. 42.

BellSouth also relies upon Section 251(g) stating that it grants the Commission jurisdiction over exchange access charges.<sup>32</sup> Section 251(g) provides as follows:

CONTINUED ENFORCEMENT OF EXCHANGE ACCESS AND INTERCONNECTION REQUIREMENTS.—On and after the date of enactment of that it provides wireline service, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment. During the period beginning on such date of enactment and until such restrictions and obligations are so superseded, such restrictions and obligations shall be enforceable in the same manner as regulations of the Commission.

The plain language of Section 251(b)(5), Section 252(d)(2) and Section 252(g), and the Commission's interpretation of those provisions, augers against an interpretation that Congress intended that intrastate access charges would be subject to Section 252(g).<sup>33</sup> Moreover, as the Ohio Public Utilities Commission points out, Congress knows how to expressly preempt intrastate authority when it wants to do so.<sup>34</sup> BellSouth's arguments also contradict the Commission's own findings in the *ISP Remand Order*,<sup>35</sup> wherein the Commission found that Section 251(g) was limited to *interstate* access requirements:

"By its express terms, of course, section 251(g) permits the Commission to supersede pre-Act requirements for interstate access services. Therefore the Commission may make an affirmative determination to adopt rules that subject such traffic to obligations different than those that existed pre-Act. For example, consistent with with that authority, the Commission has previously made the affirmative determination that certain categories of interstate access traffic should be subject to section 251(c)(4)."<sup>36</sup>

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<sup>32</sup> BellSouth Comments at p. 43.

<sup>33</sup> *Accord*, Comments of the Rural Alliance, pps. 147-151.

<sup>34</sup> Ohio Public Utilities Commission Comments at p. 8.

<sup>35</sup> *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) (*ISP Remand Order*)

<sup>36</sup> *ISP Remand Order* at para. 41.

Moreover, Section 251(d)(3) specifically preserves State access regulations and precludes the FCC from preventing enforcement of any regulation, order or policy of a State commission that establishes access and interconnection obligations for LECs, is consistent with the requirements of this section, and does not substantially prevent implementation of the requirements of Section 251.

Therefore, Arizona agrees with NARUC, the other State commission commenters and industry commenters that Section 251(g) cannot provide a basis for the FCC to preempt State authority over intrastate access charges.<sup>37</sup>

ICF further argues that Section 251(b)(5) applies to intrastate access charges as well because Congress did not include language limiting the term “telecommunications” in that provision. However, ICF’s argument is inconsistent with prior interpretations of the Commission that Section 251(b)(5) applies to competitive local exchange traffic only. *See First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996).

ICF also relies upon Section 254 of the Act. ICF argues that the FCC can preempt intrastate access charges to the extent they are inconsistent with the Commission’s duty to “rationalize universal service support.” However, at least two Circuit Courts have held that the FCC’s ability to implement universal service provisions is limited in that it does not have jurisdiction over intrastate services. *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 423-23 (5<sup>th</sup> Cir. 1999) and *Qwest Corp. v. FCC*, 258 F.3d 1191, 1203 (10<sup>th</sup> Cir. 2001).

Arizona notes that the Commission itself pointed out in its FNRPM that intrastate access charges “have been an area within the exclusive jurisdiction of State commissions...” As the Rural Alliance notes, that passage speaks for itself.<sup>38</sup>

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<sup>37</sup> See NARUC Comments at pp. 9-10; Maine and Vermont Comments at pps. 10-11; Ohio Public Utilities Commission Comments at pps. 8-11; Public Service Commission of Missouri Comments at pps. 12-14;

<sup>38</sup> Rural Alliance Comments at p. 139.

It is also telling that the Commission recognizes that even if it is successful at preempting intrastate access rates, there may be no feasible way for it to make up those lost revenues at this time, having only interstate revenues at its disposal.

In sum, Arizona agrees with the Rural Alliance that “the industry will not benefit by preempting intrastate rates.” *Id.* at p. 142. “Any attempt to impose blanket preemption of State authority, in the absence of clear statutory authority, will produce huge uncertainty in an industry sorely in need of stability.” *Id.* at p. 142.

Absent a statutory provision in the Act which could support its preemptive action, the FCC inquires at paragraphs 74-77 of the FNPRM whether it should use its authority under Section 10 of the Act to forbear from enforcing certain aspects of the compensation requirement of Section 251(b)(5) in order to implement a nationwide bill-and-keep system. The criteria that must be met in order for the FCC to forbear in any given instance include determinations that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) The forbearance from applying such provision or regulation is consistent with the public interest.

Arizona’s review of the record indicates that none of the above-listed criteria have been met. Accordingly, the Commission cannot forbear from enforcing the provisions of Section 251(b)(5).

If the Commission persists in its efforts to adopt a national plan, despite its lack of authority to do so, Arizona believes that it should give great weight to NARUC’s Plan which comes closest to what Arizona believes would be appropriate.<sup>39</sup>

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<sup>39</sup> See Comments of the Nebraska Public Service Commission, at p. 4 (“State commissions should retain a role in this process reflecting their unique insights, as well as substantial discretion in developing retail

**D. Arizona Supports A Carve Out for Rural Carriers and Believes that Rural Carrier Issues are Best Addressed At the State Level.**

No party takes issue with the general concept that rural carriers (subject to rate of return regulation at the federal level) are different and should be subject to a different set of rules than larger carriers subject to price cap regulation at the federal level. The record supports the fact that rural carriers derive a much larger percentage of their revenue from intercarrier compensation than larger carriers and will be impacted to a greater degree by any measures the Commission and States take to reform intercarrier compensation measures.<sup>40</sup>

Thus, the Commission should create a carve out for rural carriers to ensure that they are not adversely impacted by any changes to the current intercarrier compensation mechanism. The Arizona Commission currently has a docket pending<sup>41</sup> to examine and look at the access charges of rural carriers.<sup>42</sup> The Arizona Commission also has pending another docket to examine changes to its Universal Service funding mechanism.<sup>43</sup>

**E. Major Universal Service Fund Restructuring and Separations Issues Should Not Be Resolved Within the Context of This Docket But Should Be Referred to the Federal-State Joint Board.**

The comments of most parties, as well as the Plans proposed by many parties, contemplate either a major restructuring of the Federal Universal Service Fund or an expansion of the fund to cover lost interstate access revenues. While certainly these

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rates for services provided by providers of last resort, whether a dual or unified compensation solution is adopted.”); Id at p. 8 (“State commission should continue their role where applicable in setting rates and protecting consumers.”)

<sup>40</sup> See Comments of TDS, p. 26.

<sup>41</sup> *In the Matter of the Investigation of the Cost of Telecommunications Access* Docket No. T-00000D-00-0672

<sup>42</sup> This issue had also been the subject of Qwest Corporation’s price cap plan reviews. One of the initial plan’s stated objective was to bring Qwest’s intrastate access charges in parity with their interstate access charges.

<sup>43</sup> *In the Matter of Review and Possible Revision of the Arizona Universal Service Fund Rules* Docket No. RT-00000H-97-0137

issues are interrelated, the Commission should not attempt to address all of these important issues within the context of this proceeding. We agree with those parties who believe that referral to the Federal-State Joint Board is required under the law for any restructuring of the universal service fund.

Arizona also notes that the universal service fund issues are again closely tied to other issues now pending before the Commission, including the appropriate classification of VoIP, DSL and cable modem service. If the Commission continues to classify services as “information services” to achieve a deregulatory outcome whether or not that classification is appropriate, the base for contributions for both the Federal and State funds is going to shrink dramatically, while the revenue loss associated with contemplated intercarrier reform measures will put a bigger burden on the fund.

In addition, both Federal and State law contemplate that the funds will be used to ensure “universal service” which is defined as an evolving level of telecommunications services that the Commission or States (under state law) are to periodically establish. Several parties urge the Commission to include broadband facilities within the definition of “universal service” in the future. However, again the Commission’s overly pervasive focus on achieving a deregulatory outcome for broadband (i.e., DSL and cable modem service) by classifying it as information services, effectively precludes the Commission and states from including the service in any evolving definition of universal service in the future.

Arizona does not support the inclusion of intrastate revenues into the Federal universal service funding mechanism. Nor is this contemplated by the language of Sections 254(d) and 254(f). The Commission should not look at intrastate revenues as a solution to classification problems at the Federal level which are causing a narrowing of the base of potential contributors to the fund. Arizona believes that if the Commission

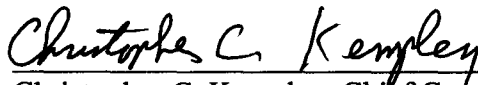
classifies services appropriately as “telecommunications services”, the Commission will not have to look to intrastate funds to make up the difference.<sup>44</sup>

We also agree with the general comments offered by one Commission that rural customers should continue to have rates comparable to those paid by urban customers.<sup>45</sup> Section 254 of the Act requires no less. However, the Commission’s goal should be to maintain universal service not to ensure “revenue neutrality” for any given ILEC or CLEC.<sup>46</sup>

### III. CONCLUSION

Arizona appreciates the opportunity to offer comment on the important issues raised in this proceeding. The FCC and States should work together to resolve these issues. The FCC should not resort to preemption of State authority in areas subject to traditional State oversight, such as intrastate access charges or intrastate universal service funding, to achieve its goals in this proceeding.

RESPECTFULLY submitted this 20<sup>th</sup> day of July, 2005.



Christopher C. Kempley, Chief Counsel  
Maureen A. Scott, Attorney  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-6022

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<sup>44</sup> Note also that these same issues may arise in the future for VoIP service with respect to the funding of E911 services. Traditionally States have funded 911 and E911 services for customers within their jurisdiction, even for wireless services which the FCC classifies as an “interstate” service. Continued classification of services as “interstate” raises a legitimate argument that the FCC should be providing the funds to underwrite these vital services, not the States.

<sup>45</sup> Comments of the Nebraska Public Service Commission at p. 4.

<sup>46</sup> See Comments of the NYDPS, pps. 5-6 (“Absent a determination that an individual eligible telecommunications carrier requires additional federal universal service funding support to achieve affordable and reasonably comparable rates, it would be inappropriate to provide such funding simply to replace lost revenue streams. This is particularly true with respect to intrastate access revenues, which the Commission may not, and should not, simply convert into federal universal service funding.”)